



March 29, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **MB** Docket No. 12-3

Dear Ms. Dortch:

Reference is made to the *ex parte* disclosure filing dated yesterday, March 28, 2012, made by the undersigned in the above-cited docket. Under 47 C.F.R. §§1.1200-1.1216, the filing should have indicated that the summary document was sent via e-mail to Mr. Grimaldi on March 21, 2012 and that the undersigned discussed the document in a meeting with Mr. Grimaldi the following day.

Sincerely,

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David R. Goodfriend

FCC Proceeding to Consider Eliminating the Sports Blackout Rule
**Summary of Comments and Replies by Sports Fans Coalition, Public Knowledge,
National Consumers League, Media Access Project, League of Fans**

- 1) The Commission should eliminate the sports blackout rule.
 - a. Unnecessary, anti-consumer public subsidy
 - b. Leagues should use private negotiations rather than public regulations
- 2) Fans, particularly elderly and disabled ones, oppose government policies supporting blackouts.
 - a. Many elderly, disabled cannot attend games in person and rely on TV
- 3) No compelling economic rationale supports sports blackouts
 - a. NFL has provided no actual evidence that blackouts significantly increase ticket sales
 - b. Top sports economists argue “no factual basis to the claim that the NFL would suffer a significant adverse effect”
- 4) Eliminating Sports Blackout rule will not migrate more sports to pay TV.
 - a. Claim is based on false premise that blackouts significantly affect attendance and revenues
 - b. Changing blackout policy will not alter relative attractiveness of broadcast or pay TV to the NFL
 - c. NFL and broadcasters trying to have it both ways: they say ending blackout rule would lead to migration of pro sports to cable, but NFL down-plays economic significance of blackouts
- 5) Blackouts won’t necessarily end if Commission eliminates Sports Blackout Rule
 - a. Compulsory copyright statutes curtail pay TV providers from carrying games
 - b. satellite providers prohibited from importing game from distant market
 - c. cable providers would have to pay six months of copyright fees for one game
 - d. Network non-duplication rule blocks blacked out games on broadcast networks
 - i. All free over-the-air games in NFL on Fox, NBC or CBS
 - e. Broadcasters would likely invoke retransmission consent to limit out-of-market use of their signals
- 6) Blackouts may end, however, if NFL forced to negotiate for them in free market
 - a. Leagues have contracts today with all major pay-TV providers and can bargain for blackout protection if they so choose.
 - b. NFL claims pay TV providers “likely would resist inclusion of any contractual alternative to sports blackout rule”
 - c. Why should government have to uphold leagues’ blackout policies, especially when they haven’t shown evidence of economic harm?
- 7) Commission should open rule-making proceeding
 - a. Top sports economists explain market has changed over four decades
 - b. compulsory copyright statutes and regulations have changed in four decades
 - c. thousands of fans have written in support of ending rule